



1 Plaintiff's waiver request was denied initially (Tr. 52) and on reconsideration (Tr. 57). A  
2 hearing was held before Administrative Law Judge ("ALJ") Denny Allen on April 17,  
3 2003. Tr. 20-58. On July 1, 2003, the ALJ found Plaintiff without fault but not entitled  
4 to waiver. Tr. 15-17. On April 13, 2004, the Appeals Council denied Plaintiff's request  
5 for review of the ALJ's decision (Tr. 4-7), making the ALJ's decision the final decision  
6 of the Commissioner. 20 C.F.R. §§ 416.1590, 422.210. Plaintiff timely filed his appeal  
7 with this Court.

## 8 **II. THE PARTIES' POSITIONS**

9 Plaintiff requests that the Court reverse the ALJ's decision and grant waiver of  
10 overpayment. Plaintiff argues that his financial circumstances should not have been  
11 considered by the ALJ because the waiver of overpayment recovery was requested as  
12 being "against equity and good conscience." Plaintiff also argues that he met the  
13 statutory and regulatory requirements for a waiver based on "against equity and good  
14 conscience." The Commissioner argues that the ALJ's decision should be affirmed  
15 because it was supported by substantial evidence and free of legal error.

## 16 **III. STANDARD OF REVIEW AND EVALUATION OF WAIVERS**

17 The Court reviews the Secretary's denial of waiver to determine if he applied the  
18 proper legal standard and if the denial is supported by substantial evidence. *Quinlivan v.*  
19 *Sullivan*, 916 F.2d 524, 526 (9<sup>th</sup> Cir. 1990). Substantial evidence is defined as more than  
20 a mere scintilla but less than a preponderance; it is such relevant evidence as a reasonable  
21 mind might accept as adequate to support a conclusion. *Magallanes v. Bowen*, 881 F.2d  
22 747, 750 (9<sup>th</sup> Cir. 1989). Where the evidence is susceptible to more than one rational  
23 interpretation, it is the Commissioner's conclusion which must be upheld. *Sample v.*  
24 *Schweiker*, 694 F.2d 639, 642 (9<sup>th</sup> Cir. 1982).

25 Waiver of recovery of an overpayment of SSI benefits may be granted when:  
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1 (a) The overpaid individual was without fault in connection  
with an overpayment, and

2 (b) Adjustment or recovery of such overpayment would  
either:

- 3 (1) Defeat the purpose of title XVI, or  
4 (2) Be against equity and good conscience, or  
5 (3) Impede efficient or effective administration of title  
XVI due to the small amount involved.

6 20 C.F.R. § 416.550. The overpaid claimant has the burden of proving that he is without  
7 fault. *Anderson v. Sullivan*, 914 F.2d 1122 (9<sup>th</sup> Cir. 1990).

#### 8 **IV. SUMMARY OF THE RECORD**

9 Plaintiff had been receiving SSI disability benefits, which were being deposited  
10 into his parent's checking account on which he was a signer. Tr. 15-16, 145-165. On  
11 December 29, 2000, Plaintiff called to notify the Social Security Administration that he  
12 had begun full time employment. Tr. 123.

13 Plaintiff moved to Seattle a month later without knowledge that the SSI monthly  
14 deposits were continuing to be made into his parent's checking account. Tr. 26-27.  
15 Plaintiff's mother submitted a declaration stating that at the time the SSI benefits were  
16 being deposited into her checking account, her husband had suffered two strokes that  
17 required her to travel from her home to Shoreline. Tr. 169. During this fourteen month  
18 period, she never checked her checking account balance; and while not aware that  
19 Plaintiff's SSI benefits had not stopped, all of the SSI funds had been used up. *Id.*  
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#### 21 **VI. THE ALJ'S DECISION**

22 The ALJ concluded that between January 2001 and February 2002 Plaintiff had  
23 resources or income in excess of the amount set by the regulations as the maximum  
24 allowable in order to be eligible for SSI benefits, thus resulting in a \$6,891.65  
25 overpayment. Tr. 16-17. Based on Plaintiff's testimony and Plaintiff's mother's  
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1 statement, the ALJ determined the Plaintiff was “without fault” in causing and accepting  
2 the overpayment. Tr. 16. The ALJ found that Plaintiff receives \$1, 498.00 in monthly  
3 benefits and that Plaintiff’s monthly expenses approximately meet this level of income.  
4 *Id.* The ALJ also found that Plaintiff had access to assets which may be exempt. Thus,  
5 the ALJ opined that given Plaintiff’s income and assets, recovery of overpayment would  
6 not defeat the purpose of Title XVI of the Act or be “against equity and good conscience”  
7 and denied waiver. Tr. 16-17.

## 8 9 **VII. DISCUSSION**

### 10 **A. Plaintiff’s Financial Condition**

11 Plaintiff argues that he was denied waiver of overpayment based on the ALJ’s  
12 erroneous belief that in order to qualify for a finding of “against equity and good  
13 conscience,” an individual must prove that repayment would create a financial hardship.  
14 Initially, in arguing his financial condition is not relevant, Plaintiff relied on 20 C.F.R. §  
15 404.509(b) (“The individual’s financial circumstances are not material to a finding of  
16 *against equity and good conscience.*”) Plaintiff was advised by Defendant that his  
17 reliance on § 404.509(b) is misplaced since Plaintiff was receiving benefits under SSI  
18 and therefore must look to the regulations at C.F.R. §§ 416.501, et seq. In his reply,  
19 Plaintiff, citing 20 C.F.R. § 416.555<sup>1</sup>, claims that even under the SSI regulations, his  
20 financial circumstances were not material. However, this section relates to waiver of  
21 recovery of overpayment based on a finding that it “would impede efficient or effective  
22 administration of Title XVI due to the small amount involved.” 20 C.F.R. § 416.555.

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24 <sup>1</sup> Plaintiff claims that Defendant concedes that Plaintiff’s financial condition is not relevant  
25 to a finding of “against equity and good conscious” because § 416.555 was first cited by  
26 Defendant in his response brief. Even though this section was erroneously included in  
Defendant’s brief, Defendant never conceded this point.

1 The relevant section in this case, § 416.554, does not foreclose the consideration of a  
2 claimant's financial circumstance. Accordingly, the ALJ did not err in considering  
3 Plaintiff financial circumstances.

4 **B. The Requirements of "against equity and good conscience"**

5 Plaintiff also claims that he meets the waiver requirements of the § 416.554  
6 ("against equity and good conscience").

7 20 C.F.R. § 416.554 states in part:

8 Adjustment or recover is considered to be *against equity and good*  
9 *conscience* if an individual changed his or her position for the worse  
10 or relinquished a valuable right because of reliance because of  
11 reliance upon a notice that payment would be made or because of the  
12 incorrect payment itself. In addition, adjustment or recovery is  
considered to be *against equity and good conscience* for an  
individual who is a member of an eligible couple that is legally  
separated and/or living apart for that part of an overpayment not  
received, but subject to recovery under § 416.570.

13 20 C.F.R. § 416.554 (emphasis in original).

14 Plaintiff argues that pursuant to *Quinlivan v. Sullivan*, 916 F.2d 524, even though  
15 he is not a member of an "eligible couple," his situation is similar to the third situation  
16 described in § 416.554, thus making him eligible for waiver. In *Quinlivan*, the Ninth  
17 Circuit held that "the meaning of the phrase 'against equity and good conscience,' cannot  
18 be limited to the three narrow definitions set forth in the Secretary's regulation."  
19 *Quinlivan*, 916 F.2d at 527. "Congress intended a broad concept of fairness to apply to  
20 waiver requests, one that reflects the ordinary meaning of the statutory language and  
21 takes into account the facts and circumstances of each case." *Id.*

22 Here, the ALJ, did not deny waiver based on Plaintiff's failure to fit within the  
23 narrow statutory definition. Rather, in reliance on the *Quinlivan* broad reading of the  
24 regulation, the ALJ properly considered Plaintiff's ability to repay and concluded that  
25 Plaintiff "has not presented anything so egregious as to violate equity and good  
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1 conscience if he is required to repay to overpayment.” Accordingly, the ALJ did not err  
2 in denying waiver.

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4 **VIII. CONCLUSION**

5 The Commissioner’s decision is supported by substantial evidence and is free of legal  
6 error. Accordingly, the undersigned recommends that the Commissioner’s decision be  
7 **AFFIRMED.** A proposed Order accompanies this Report and Recommendation.

8 DATED this 2<sup>nd</sup> day of September, 2005.

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11 **MONICA J. BENTON**  
12 United States Magistrate Judge  
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